



OFFICE OF THE MAYOR

September 17, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
45 12th Street, SW
Washington, DC 20554

***Re: Accelerating Wireline Broadband Deployment by Removing Barriers to
Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless
Broadband Deployment by Removing Barriers to Infrastructure Investment,
WT Docket No. 17-79***

Dear Ms. Dortch:

As the mayor of the Village of Chagrin Falls, I am writing to express concerns about the Federal Communications Commission's ("FCC") proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment. As I understand it, the Declaratory Ruling and Third Report and Order, if approved by the FCC, will have the disastrous effect of undoing the collaborative work and months-long negotiations, discussions and compromise between Ohio municipalities and the telecommunications industry, which culminated in passage of Ohio House Bill 478. In July, the Village of Chagrin Falls, like most municipalities in Ohio, enacted legislation and forms consistent with Ohio House Bill 478.

While I understand the FCC's efforts to engage local government on this issue and share the FCC's goal of ensuring the growth of cutting-edge broadband services for all Americans, I remain concerned about several provisions of the proposal. Local governments have an important responsibility to protect the health, safety, and welfare of residents, and I am concerned that these preemption measures compromise traditional home-rule authority and expose wireless infrastructure providers to unnecessary liability.

For instance, the FCC's proposed new collocation shot clock category is too extreme. The proposal designates any preexisting structure, regardless of its design or suitability for attaching wireless equipment, as eligible for this new expedited 60 day shot clock. When paired with the FCC's previous decision exempting small wireless facilities from federal historic and environmental review, this places an unreasonable burden on local governments to promote historic preservation, the environment, and safety of residents of our Village. Adding up to three cubic feet of antenna and 28 cubic feet of additional equipment to a structure not originally designed to carry that equipment is substantial and may necessitate more review than the FCC has allowed in its proposal. From a practical matter, in the Village of Chagrin Falls, there are preexisting structures that simply were neither designed for nor contemplated to hold additional wireless equipment and it is very likely that the structures will not maintain the added load or will not continue to serve its intended purpose. The rationale for increasing the amount of time is to allow adequate time to review the design and suitability of additional wireless equipment to a structure that never contemplated such use – to reduce that amount of time for adequate review is reckless, abrogates the local government's responsibility to protect the health, safety and welfare of residents, and is not necessary to promote the best interests of small cell wireless facilities.

Also, the FCC's proposed definition of "effective prohibition" is overly broad. The draft report and order proposes a definition of "effective prohibition" that invites challenges to long-standing local rights-of-way requirements unless they meet a subjective and unclear set of guidelines. While the FCC may have intended to preserve local review, this framing and definition of effective prohibition opens local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing and undergrounding. For instance, the Village of Chagrin Falls recently enacted design guidelines to ensure the health, safety and welfare of its residents and preserve the character of village while at the same time reasonably regulating certain aspects of the design of small cell wireless facilities. Notably, these design guidelines were the result of laborious meetings, discussions, and compromise between the Ohio municipalities and the telecommunications industry and the Village fully expects that the telecommunications industry will gladly comply with them as they are reasonable and do not create an undue burden on the telecommunications industry.

Further, the FCC's proposed recurring fee structure is an unreasonable overreach that will harm local policy innovation. Many of the Ohio municipalities have worked to negotiate fair deals with wireless providers which fee might exceed the FCC's proposed \$270 per small cell site for compensation and the wireless providers might be providing additional benefits not contemplated by the FCC in this \$270 fee. A one-size-fit all approach is not practical, as each municipality in Ohio is unique and the \$270 fee may be deemed too large or too small depending on the deal that was reached.

The Village of Chagrin Falls has worked with private businesses to build the best broadband infrastructure possible for our residents and that work will all be for naught if the proposed declaratory ruling and report and order is approved. If the FCC does not oppose the declaratory ruling and report and order, the Village loses local authority, stymies local innovation and limits the obligations wireless providers have to our Village, promotes unsafe structures contiguous to our sidewalks, in a community that prides itself on being a walking community, and its residents. As the mayor of the Village of Chagrin Falls, I strongly urge you to oppose this declaratory ruling and report and order.

Respectfully submitted,



Mayor William Tomko

cc: Village Council
Dale H. Markowitz, Law Director